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United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Railroad Retirement Board: Status of Amounts Transferred Pursuant to Section 401 of the Railroad Retirement Solvency Act of 1983

File: B-287158

Date: October 10, 2002

DIGEST

Prior to 1974, individuals with sufficient earnings under both the railroad retirement and social security programs could qualify for benefits under both programs. The attendant “windfalls” were benefits in excess of what the individuals would have received had they worked exclusively within one system. After 1974, Congress intended that the costs of these windfall payments be borne by the general fund and not by the railroad retirement system. Payments authorized under section 401 of the Railroad Retirement Solvency Act of 1983 were intended to recompense the railroad retirement system for having covered the appropriation shortfall in paying the windfall benefits between 1974 and 1981. The transferred amounts, although called “loans,” were to be repaid only to the extent that funds were appropriated for that purpose, which has not been done. Since it was not intended that the Railroad Retirement Board repay the transferred amounts from its accounts, it is not under any legal obligation regarding these funds absent an appropriation for such purpose.

DECISION

The Bureau of the Public Debt, Department of the Treasury (Treasury) requests our legal opinion concerning the treatment of \$2.1 billion transferred from the general fund to the Railroad Retirement Board (RRB) in three installments pursuant to section 401 of the Railroad Retirement Solvency Act of 1983 (the 1983 Act), 45 U.S.C. § 231n. Under the 1983 Act, the transferred amounts, called “loans,” would be “repaid to the general fund to the extent sums are appropriated for the purpose.” 45 U.S.C. § 231n(d)(6). In the 16 years since the last amount was transferred, the Congress has not appropriated funds for the purpose of repayment of the amounts transferred.

Treasury maintains that the transferred amounts are loans to RRB that RRB must repay to the Treasury's general fund. Treasury insists that the RRB should either perfect the loans by requesting a repayment appropriation or request the Congress to forgive the loans. RRB considers the amounts not loans but payments to RRB for shortfalls in its appropriations for certain retirement benefits paid out of the Railroad Retirement Account between 1974 and 1981. RRB asserts that it is under no obligation to repay the amounts, nor does it have a legal obligation to take either of the actions Treasury has proposed. For the reasons stated below, we agree with RRB's position regarding these payments.

BACKGROUND

The RRB is an independent agency within the executive branch of the federal government charged with administering retirement-survivor and unemployment-sickness benefit programs for railroad workers and their families. Railroad Retirement Act of 1974 (the 1974 Act), 45 U.S.C. §§231-231u, 351-369 (1988); see generally, 69 Comp. Gen. 483, 484 (1990). Initially, as established in the 1930s, the railroad program was financed by contributions from rail employers and employees. However, numerous subsequent legislative changes increased federal financial involvement. See GAO, *Railroad Retirement, Federal Financial Involvement* (GAO/HRD 86-88, May 9, 1988, at 10-16).

Under laws in effect prior to 1975, individuals with sufficient earnings under both the railroad retirement and social security programs could qualify for both railroad retirement and social security benefits, termed "dual benefits." The attendant so-called "windfalls" were benefits in excess of what individuals would have received had they worked exclusively within only one system. These dual benefits' windfalls were paid out of and seriously eroded the financial viability of the railroad retirement trust fund for years. Id. at 14. See also Givens v. Railroad Retirement Board, 720 F.2d 196, 198 (1983); H.R. Rep. No. 98-30 Part I, 98th Cong., 1st Sess. 19-20 (March 9, 1983), reprinted in 1983 U.S.C.C.A.N. 729. In response, the 1974 Act restructured the railroad retirement system by eliminating future accruals of dual benefits except for persons vested or "grandfathered in" as of December 31, 1974.¹ The 1974 Act also authorized annual appropriations to fund this phase-out of dual benefits over a 25-year period (i.e., for fiscal years 1976-2000, then estimated at around \$250 million annually).²

¹ Pub. L. No. 93-445, Title I, § 3(h)(1), 88 Stat. 1305, 1323-24 (1974), codified at 45 U.S.C. § 231b(h).

² Id. § 15(d), 88 Stat. 1347-1348, codified at 45 U.S.C. § 231n(d); see also, H.R. Rep. No. 98-30 Part I, supra at 20, 29; S. Rep. No. 93-1163, 93rd Cong., 2d Sess. (1974) reprinted in 1974 U.S.C.C.A.N. 5702.

However, prior to fiscal year 1982, appropriations were not adequate to fully fund the total amount of vested dual benefit/windfall payments. Since the payment of these benefits was not limited to the amounts appropriated, the RRB continued to pay the windfall benefits from the railroad retirement account, which strained that account and contributed to a financial crisis in the system. This situation was stopped in fiscal year 1982, when 1981 amendments to the 1974 Act provided that dual benefits were to be paid from a separate dual benefits payments account and vested dual benefits were to be reduced so as not to exceed the annual appropriation.³ However, there was no provision for compensating the Railroad Retirement Account for having absorbed the shortfall in appropriations for prior years. The financial state of the railroad retirement system continued to deteriorate.⁴

To compensate the RRB for the shortfall, the 1983 Act provided for funding the shortfall in three installments under Title IV, section 401, which amended section 15(d) of the 1974 Act by adding at the end a new subdivision as follows:

“(2) The Secretary of the Treasury—

“(i) shall transfer from the general fund as a loan to the [Railroad Retirement] Board on January 1, 1984, one-third of the special amount described in subdivision (3) of this subsection;

“(ii) shall transfer from the general fund as a loan to the Board on January 1, 1985, one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984; and

“(iii) shall transfer from the general fund as a loan to the Board on January 1, 1986, the final one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984.

“(3) The special amount referred to in subdivision (2) of this subsection is the amount which, as of January 1, 1984, would place the Railroad Retirement Account in the same position it would have been on that date if no annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981, . . . and no sums had been appropriated as authorized in section 15(d) of this Act.

³ Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, Title XI, Subtitle D, §1122(c), 95 Stat. 357, 639 (1981), codified at 45 U.S.C. § 231f(c).

⁴ See H.R. Rep. No. 98-30, Part I, supra at 19-27; 52-53; 116-118.

* * * * *

“(6) The amounts transferred as loans under subdivision (2) of this subsection shall be repaid to the general fund to the extent sums are appropriated for that purpose, and there are hereby authorized to be appropriated, in addition to any other sums authorized to be appropriated for the purposes of this Act and from any sums in the Treasury not otherwise appropriated, such sums as may be necessary to make such repayments.”

45 U.S.C. § 231n(d)(2), (3) and (6) (Emphasis added.). Pursuant to these provisions in the 1983 Act, Treasury transferred \$628,800,000, \$706,400,000, and \$793,200,000 from the general fund to the RRB on January 3, 1984, January 2, 1985, and January 2, 1986, respectively, for a total of \$2,128,400,000. In the 16 years since the last amount was transferred, the Congress has not appropriated funds to RRB for repayment of the amounts transferred.

ISSUE

The question at issue here is the current status of the transferred funds. Treasury’s position⁵ that the transferred amounts at issue are loans to be repaid to the general fund is based primarily on the language of the 1983 Act, quoted above, which uses the word “loan(s)” several times.⁶ Treasury asserts that its position is also supported by the legislative history, citing to the House Report, H.R. Rep. No. 98-30 Part I, *supra* at 29, which states under the heading “Borrowing authority for past dual benefit shortfall” that “[e]ach installment would be borrowed from the Treasury on the appropriate date, with the amounts borrowed to be repaid upon appropriations for that purpose.” Treasury argues that the use of the word “borrowed,” defined as having “receive[d] money with the understanding or agreement that it must be repaid,” together with “loan” indicates the intention that the amounts were meant to be used temporarily and then returned to the general fund. Chief Counsel Memorandum, October 26, 1999.

In Treasury’s view, the fact that repayment funds for the loans have not been appropriated cannot be viewed as a repeal or invalidation of the RRB’s obligation to repay the loaned amounts. Chief Counsel Memorandum, October 26, 1999. Consequently, Treasury maintains that the RRB is required to perfect the 1983 Act by

⁵ Treasury’s submission to this Office included a Department of Treasury, Bureau of the Public Debt Chief Counsel Memorandum, “Railroad Retirement Account Borrowings,” October 26, 1999, which set forth the legal positions discussed.

⁶ *Black’s Law Dictionary, Seventh Edition*, defines “loan” as “an act of lending . . . for temporary use.”

requesting a specific appropriation to cover the amount of the transactions so that repayment of the loans can be made. In this regard, Treasury contends that the situation here is similar to that in a 1984 decision in which our Office determined that, where the Tax Equity and Fiscal Responsibility Act of 1982 authorized litigation cost awards to taxpayers who prevailed in U.S. Tax Court, and the Congress did not appropriate funds for this purpose, the relevant agency should request specific appropriations to cover the litigation cost awards. 63 Comp. Gen. 470 (1984). Alternatively, Treasury asserts that the RRB could request congressional forgiveness of the debt, and thus be relieved of the obligation to repay.⁷

Contrary to Treasury's position, the RRB's position is that the 1983 Act authorized funding to repay the railroad retirement account for the amount previously expended (plus interest) based on the shortfall in appropriations between 1974 and 1981 for the vested dual benefits/windfall payments.⁸ The RRB interprets the 1983 Act as not imposing any obligation on the Railroad Retirement Account to repay the transferred amounts. The 1983 Act also does not impose any obligation on the RRB to request repayment appropriations from general revenues or on Congress to appropriate repayment funds from general revenues. Further, the RRB is of the opinion that it does not have a legal obligation to request forgiveness of the debt. Finally, the RRB asserts that, since the money to repay the loans to general revenues would be appropriated from general revenues, repayment of the transferred amounts would not serve any practical financial purpose.

While Treasury and RRB staff have conversed and corresponded on this issue since February 1999, they have not come to a resolution. This matter is of concern to Treasury because Treasury shows the payment as a loan receivable on its financial statement, but the RRB does not show a corresponding loan payable on its statement. Therefore, no interagency elimination occurs when the financial statements for the entire federal government are consolidated. In this regard, as part of Treasury's

⁷ According to Treasury, the request for appropriation or forgiveness of the debt can be achieved through the RRB's annual budget plan, which is presented by the President to Congress. Treasury suggests that in making a specific budget request, the RRB can make a budget submission requesting a specific amount of funding for repayment of the funds and Congress can make a specific line-item appropriation for that purpose, or the RRB can request a lump-sum appropriation and pay the loans from the lump-sum amount.

⁸ RRB's submission to this Office included a Memorandum from the General Counsel to the Chief Financial Officer, "Repayment of Amounts Transferred Pursuant to Section 15(d)(2) of the Railroad Retirement Act," September 13, 2000, and a Memorandum from the Chief Financial Officer to The Board, "Discussion with Treasury officials regarding \$2.1 billion loan repayment issue," April 30, 1999, both of which set forth RRB's position on this issue.

annual financial statement audits, Treasury's auditors have requested that the RRB confirm the transferred amounts at issue as outstanding loan balances. The RRB has returned these annual balance confirmations with negative responses and indicated that the amounts at issue have been classified as "donated capital" on the RRB's financial statement. Letter from Assistant Commissioner, Office of Public Debt Accounting, Department of the Treasury, Bureau of Public Debt, to the Comptroller General, January 12, 2001.

DISCUSSION

In interpreting provisions of a statute, we follow the settled rule of statutory construction that provisions with unambiguous language and specific directions may not be construed in any manner that will alter or extend their plain meaning. Mallard v. United States District Court, 490 U.S. 296 (1989); B-271845, Aug. 23, 1996. However, if giving effect to the plain meaning of words in a statute leads to an absurd result which is clearly unintended and at variance with the policy of the legislation as a whole, the purpose of the statute rather than its literal words will be followed. See Auburn Housing Authority v. Martinez, 277 F.3d 138, 144 (2d Cir. 2002) ("Statutory construction . . . is a holistic endeavor. . . . [T]he preferred meaning of a statutory provision is one that is consonant with the rest of the statute."). Consequently, statutory phrases and individual words cannot be viewed in isolation. See Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."); United States v. Morton, 467 U.S. 822, 828 (1984) ("We do not . . . construe statutory phrases in isolation; we read statutes as a whole . . . Words . . . must be read in light of the immediately following phrase.").

With this in mind, we agree with the RRB's position that it is not under any obligation regarding the repayment of the funds transferred under the 1983 Act. While the amount transferred was called a loan, section 15(d)(6) clearly states that the sums "shall be repaid to the extent sums are appropriated for that purpose." The obvious intention is that the amounts transferred would be restored to the Treasury only by future appropriation action of the Congress, not by the RRB. This interpretation is consonant with the purpose of the entire new subdivision, stated in section 15(d)(3) as being to "place the Railroad Retirement Account in the same position it would have been on that date if no annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981." See B-271845, supra (the clear intent of Congress must be determined by giving all language of the statute its plain meaning). To read the term "loan" as strictly as Treasury does is inconsistent with the plain language of the statute, and would thwart the purpose of this section of the 1983 Act.

The legislative history of the 1983 Act supports this interpretation. Treasury, citing the House Report in favor of its view, took one of the Report's points out of context (see our statement of Treasury's position above). In addition to noting that "amounts

transferred” would be “repaid,” the Report contained the fuller explanation of the 1983 Act amendment to section 15(d) of the 1974 Act:

“The 1974 Railroad Retirement Act provided for the phasing out of dual benefits, additional benefits which accrued to individuals as a result of dual service under both railroad retirement and social security. The clear intent of that Act was that the cost of dual benefits was to be paid out of general revenues. However, the Office of Management and Budget ignored the law and requested less than what was needed to fully fund dual benefits. Since full dual benefits were being paid to beneficiaries, the difference came out of the railroad retirement account The total shortfall to the account, between 1974 and 1981, as a result of OMB’s underfunding decision, stands now at \$1.7 billion, including foregone interest.

“The agreement⁹ proposes the transfer of the unpaid amount owing to the railroad retirement account in three installments Each installment would be borrowed from the treasury on the appropriate date, with the amounts borrowed to be repaid upon appropriations for that purpose. Since each transfer would be an intragovernmental transfer, there would be no effect on the budget deficit.”

H.R. Rep. No. 98-30 Part I, *supra* at 29 (emphasis added). The Committee’s point was that since the 1974 Act, Congress had intended that the cost of the dual benefits/windfall payments should be borne by the general fund and not by the railroad retirement system; as a result RRB had to be recompensed for having covered the shortfall between 1974 and 1981. Interestingly, Representative Florio, the sponsor of the legislation, described the language as follows:

“A. Repayment of debt owed to system

The Railroad Retirement System would be repaid the debt owed it by the Treasury as a result of past underfunding of the dual benefit.”

129 *Congressional Record* H 6135 (daily ed. August 1, 1983). The plain reading of that sentence indicates that to the extent there was a “loan,” it was not the amounts transferred to RRB as a result of the 1983 Act, but the costs RRB incurred between 1974 and 1981 on behalf of the general fund.

⁹ Here “agreement” refers to a compromise reached between the Committee on Ways and Means and the Committee on Energy and Commerce, to whom the bill (H.R. 1646) was referred.

Regarding Treasury's view that, even if the RRB is not directly required to repay the sums transferred under the 1983 Act, it is under an obligation to seek the requisite congressional action, we could find nothing in the statute or its legislative history to support this view. The situation here can be distinguished from that in our decision in 63 Comp. Gen. 470, supra. In that case, although Congress had authorized the payment of litigation costs in Tax Court cases, no funds had been specifically appropriated for that purpose. Moreover, the legislative history of the provision, 26 U.S.C. § 7430, indicated that Congress did not intend that agency funds be used to pay such awards, and the permanent indefinite judgment fund appropriation, established by 31 U.S.C. § 1304 for costs of judgments and settlements, was not available to pay the awards because section 1304 does not apply to the Tax Court. In that case, we recommended that, since the intention of Congress to provide litigation costs would be thwarted by inaction, IRS request specific appropriations to cover the costs of awards, or, in the alternative, Congress could make the permanent judgment fund appropriation of section 1304 available for such costs. In the case at issue here, however, the intention of Congress would not be thwarted by inaction, since as we have already demonstrated the intention was, in fact, to reimburse the RRB, which the 1983 Act accomplished.

CONCLUSION

In view of the foregoing, the RRB is not under any legal obligation regarding the funds transferred under the 1983 Act. To the extent that Treasury and RRB require advice on the appropriate financial statement treatment of the transfer, we would refer Treasury and RRB to the good offices of the Federal Accounting Standards Advisory Board.

/s/

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General Counsel